

ASSEMBLY BILL

No. 1074

Introduced by Assembly Member Chu

February 22, 2005

An act to amend Sections 121010 and 121020 of the Health and Safety Code, relating to HIV testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1074, as introduced, Chu. HIV testing for foster children.

Existing law prohibits disclosure of the results of a blood test to detect antibodies to the probable causative agent of AIDS without the written consent of the subject of the test, except to designated persons.

This bill would add a foster parent, relative caregiver, or assigned social worker for a child who has been adjudged a dependent child of the juvenile court, to the list of persons to whom disclosure may be made without consent.

Existing law authorizes the parent, guardian, conservator, or other person lawfully authorized to make health care decisions on behalf of a person who is not competent to consent, to give consent for the test to be performed. Under existing law, a minor under the age of 12 years is deemed not competent to consent under these circumstances.

This bill would additionally authorize a foster parent or relative caregiver of a child adjudged to be a dependent child of the juvenile court, and the child's social worker, to consent to the test on the child's behalf.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Approximately 110,000 children are placed into foster care
4 in California, where they are cared for by a publicly regulated
5 and publicly funded system of home-based children's caregivers
6 known as foster care. The majority of Californian children placed
7 into foster care will return to their birth parents or be placed with
8 relative caregivers. One-fourth of the rest of them, however, will
9 still be in foster care after three years.

10 (b) Research proves that foster children experience a much
11 higher rate of illness and undiagnosed and untreated health
12 problems than other children. Infants and some older children
13 frequently enter the foster care system as a result of
14 abandonment, relinquishment by birth families, sudden
15 emergencies, and other events requiring child protective services
16 to place children quickly into foster homes with little or no
17 known medical information.

18 (c) Children frequently enter foster care, or move in and out of
19 multiple foster placements, lacking accurate or current medical
20 records.

21 (d) These factors too often result in foster children not being
22 diagnosed, in misdiagnoses, and in incorrect or delayed treatment
23 of medical conditions. Among these conditions is the human
24 immunodeficiency virus (HIV), which causes AIDS.

25 (e) The National Center for HIV, STD and TB Prevention
26 estimates that there are 138 children living with AIDS in
27 California. The number of infants born with HIV infection has
28 declined in the United States since widespread implementation of
29 Public Health Service recommendations that pregnant women be
30 tested and counseled, and that infected women and their infants
31 during delivery and after birth be aggressively treated with drug
32 therapies. However, the 2003 revisions to California's public
33 health statutes regarding HIV testing for pregnant women
34 recommend, but do not require, that pregnant women be tested.

35 (f) The law requires that a blood specimen be obtained from a
36 pregnant woman by a hospital or doctor who assists at a birth, but
37 allows a mother to refuse to have her blood tested, to refuse to
38 consent to have her baby's blood obtained or tested, or to refuse

1 to let her baby be treated during delivery, and hospitals are not
2 required to obtain blood samples from newborns for later testing.

3 (g) HIV and AIDS, though currently incurable, are treatable
4 conditions and lives can be saved, extended, and the quality of
5 life enhanced if these conditions are diagnosed early and
6 effective treatments begun at the earliest possible time. Infants
7 who are HIV positive, if treated aggressively in utero or soon
8 after birth, can often lead a normal life free of disease symptoms
9 and can enjoy a long life expectancy.

10 (h) HIV testing for newborns before they may be discharged
11 from the hospital is not mandatory in California, as it is in New
12 York and some other states. California does require mandatory
13 testing of newborns for other medical conditions, disabilities, and
14 diseases, but not HIV or AIDS. Nor is HIV/AIDS testing
15 required by law or routinely done on children who become
16 dependents of the courts.

17 (i) Children who enter the foster care system are not required
18 by law to be tested for HIV. As a result, an unknown number of
19 infants and toddlers, and older children at risk medically for HIV
20 and AIDS enter California's foster care system each year without
21 life-threatening medical conditions diagnosed. These children
22 will not receive timely life-prolonging and life-enhancing
23 treatment for these incurable conditions.

24 (j) HIV and AIDS can remain asymptomatic for years. It is
25 essential that babies and youth be diagnosed early, and, where
26 indicated, treatment begun immediately. Of newborns born
27 HIV-positive, about one-half will manifest symptoms of the
28 disease AIDS by the time they reach three years of age.
29 Approximately 50 percent of HIV-positive children under age 12
30 years will display at least some symptoms typically related to
31 HIV.

32 (k) Not all children in California are at risk for developing
33 AIDS, and not all foster children require testing. Medical science
34 has determined, however, that there are certain risk factors
35 which, if present in a child's life or history, indicate that HIV
36 testing is appropriate and beneficial to both children and the
37 general public. At-risk children who should be tested are those
38 removed from the custody of parents who are or were users of
39 intravenous drugs, methamphetamine, have multiple sex partners
40 or a history of unprotected sexual activity with multiple partners,

1 and children whose identities and medical histories are
2 completely unknown, such as infants abandoned at birth.
3 Additionally, children should be tested for HIV if born to
4 mothers who refuse testing for themselves, and mothers with
5 high-risk lifestyle factors of their own who have refused or failed
6 to obtain the prenatal testing and care that might permit prenatal
7 treatment of the developing fetus.

8 (l) All of these children are at risk of being HIV positive when
9 they enter the foster care system. They are also at risk of having
10 their HIV status go undiagnosed and suffering from undiagnosed
11 and untreated AIDS. Failure to diagnose and treat these
12 conditions poses risks to themselves, their caregivers, and to the
13 future sex partners of the children as they age. For all these
14 reasons, it is essential that foster children who are at risk of
15 having contracted AIDS in utero or later in life be tested for HIV,
16 regardless of whether their birth parents or legal guardians will
17 consent to testing.

18 (m) California counties have widely varying policies
19 concerning HIV testing for dependent children and disclosure of
20 test results to prospective foster parents, current foster parents
21 and relative caregivers, and prospective adoptive parents.

22 (n) It is therefore the intent of the Legislature in enacting this
23 act to establish a statewide policy regarding HIV testing for
24 dependent children.

25 SEC. 2. Section 121010 of the Health and Safety Code is
26 amended to read:

27 121010. Notwithstanding Section 120975 or 120980, the
28 results of a blood test to detect antibodies to the probable
29 causative agent of AIDS may be disclosed to any of the
30 following persons without written authorization of the subject of
31 the test:

32 (a) To the subject of the test or the subject's legal
33 representative, conservator, ~~or~~ to any person authorized to
34 consent to the test pursuant to subdivision (b) of Section 120990,
35 *or to a foster parent, relative caregiver, or assigned social*
36 *worker for a child who has been adjudged a dependent child of*
37 *the juvenile court pursuant to Section 300 of the Welfare and*
38 *Institutions Code.*

39 (b) To a test subject's provider of health care, as defined in
40 subdivision (d) of Section 56.05 of the Civil Code, except that for

1 purposes of this section, “provider of health care” does not
2 include a health care service plan regulated pursuant to Chapter
3 2.2 (commencing with Section 1340) of Division 2.

4 (c) To an agent or employee of the test subject’s provider of
5 health care who provides direct patient care and treatment.

6 (d) To a provider of health care who procures, processes,
7 distributes, or uses a human body part donated pursuant to the
8 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with
9 Section 7150) of Part 1 of Division 7).

10 (e) (1) To the designated officer of an emergency response
11 employee, and from that designated officer to an emergency
12 response employee regarding possible exposure to HIV or AIDS,
13 but only to the extent necessary to comply with provisions of the
14 Ryan White Comprehensive AIDS Resources Emergency Act of
15 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

16 (2) For purposes of this subdivision, “designated officer” and
17 “emergency response employee” have the same meaning as these
18 terms are used in the Ryan White Comprehensive AIDS
19 Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec.
20 201).

21 (3) The designated officer shall be subject to the
22 confidentiality requirements specified in Section 120980, and
23 may be personally liable for unauthorized release of any
24 identifying information about the HIV results. Further, the
25 designated officer shall inform the exposed emergency response
26 employee that the employee is also subject to the confidentiality
27 requirements specified in Section 120980, and may be personally
28 liable for unauthorized release of any identifying information
29 about the HIV test results.

30 SEC. 3. Section 121020 of the Health and Safety Code is
31 amended to read:

32 121020. (a) (1) When the subject of an HIV test is not
33 competent to give consent for the test to be performed, written
34 consent for the test may be obtained from the subject’s parents,
35 guardians, conservators, or other person lawfully authorized to
36 make health care decisions for the subject, *including a foster*
37 *parent or relative caregiver of a child adjudged to be a*
38 *dependent child of the juvenile court pursuant to Section 300 of*
39 *the Welfare and Institutions Code, and the child’s social worker*
40 *as identified or assigned by the agency having legal custody and*

1 *control of the child.* For purposes of this paragraph, a minor shall
2 be deemed not competent to give consent if he or she is under 12
3 years of age.

4 (2) ~~Notwithstanding~~ *With respect to any person other than one*
5 *authorized to give consent pursuant to paragraph (1),* when the
6 subject of the test is a minor adjudged to be a dependent child of
7 the court pursuant to Section 360 of the Welfare and Institutions
8 Code, written consent for the test to be performed may be
9 obtained from the court pursuant to its authority under Section
10 362 or 369 of the Welfare and Institutions Code.

11 (b) Written consent shall only be obtained for the subject
12 pursuant to subdivision (a) when necessary to render appropriate
13 care or to practice preventative measures.

14 (c) The person authorized to consent to the test pursuant to
15 subdivision (a) shall be permitted to do any of the following:

16 (1) Notwithstanding Sections 120975 and 120980, receive the
17 results of the test on behalf of the subject without written
18 authorization.

19 (2) Disclose the test results on behalf of the subject in
20 accordance with Sections 120975 and 120980.

21 (3) Provide written authorization for the disclosure of the test
22 results on behalf of the subject in accordance with Sections
23 120975 and 120980.